

REMARKS/ARGUMENTS

This Amendment is being filed in response to the Final Office Action dated April 15, 2009. Reconsideration and allowance of the application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 1-13 are pending in the Application.

In the Final Office Action, claims 1-13 are rejected under 35 U.S.C. §101. This rejection of claims 1-13 is respectfully traversed. However, without agreeing with the position forwarded in the Final Office Action and in the interest of advancing prosecution, claims 1-13 are amended to clarify that the claims are directed to a computer readable memory medium. It is respectfully submitted that claims 1-13 clearly are directed to statutory subject matter. Accordingly, it is respectfully submitted that the subject matter of claims 1-13 are statutory and it is respectfully requested that this rejection under 35 U.S.C. §101 be withdrawn.

In the Final Office Action, claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 7,263,201. The Final Office Action indicates that a terminal disclaimer may be used to overcome this rejection. This rejection is respectfully

traversed. The Final Office Action admits that U.S. Patent No. 7,263,201 omits significant portions of the claims however, draws the conclusion that "[i]t would have been obvious ..." (see, Final Office Action, page 6). This position of the Final Office Action is respectfully traversed. However, it is respectfully submitted that Applicants will consider filing a terminal disclaimer, if necessary in view of any allowable claims, upon indication that the present application is otherwise allowable or includes allowable claims.

In the Final Office Action, claims 1-13 are rejected under 35 U.S.C. §103(a) over European Patent Publication No. EP 0997899 to Murakami ("Murakami") in view of U.S. Patent Publication No. 2001/0046198 to Morioka ("Morioka"). These rejections are respectfully traversed. It is respectfully submitted that claims 1-13 are allowable over Murakami in view of Morioka for at least the following reasons.

It is respectfully submitted that the record carrier of claim 1 is not anticipated or made obvious by the teachings of Murakami in view of Morioka. For example, Murakami in view of Morioka does not disclose or suggest, a record carrier that amongst other patentable elements, comprises (illustrative emphasis added) "a

data area for storing data in the form of marks, in which the data is encoded by means of a channel code, wherein a parameter of the channel code is controlled so as to introduce a predetermined run length distribution in the marks on the record carrier, thereby introducing first information relating to a visually discernable watermark, and a non-data area comprising second information relating to the visually discernable watermark, the first and the second information together forming the visually discernable watermark" as recited in claim 1, and as similarly recited in claim 13.

It is respectfully submitted that while the Final Office Action takes a position that Murakami shows a visually discernable watermark, this position is respectfully traversed. While the Final Office Action refers to Murakami, FIG. 20 and paragraphs [0092] and [0093], reliance on these section of Murakami or any sections for that matter is misplaced. While the cited sections refer to a burst cutting area BCA and a watermark, Murakami does not disclose or suggest that these features are visually discernable.

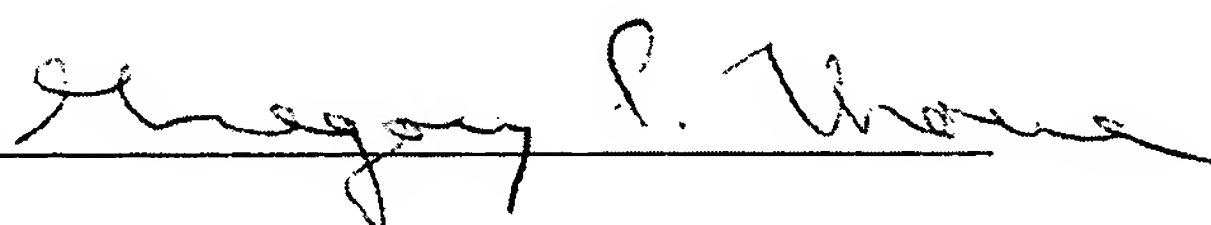
Based on the foregoing, the Applicants respectfully submit that independent claims 1 and 13 are patentable over Murakami in

view of Morioka and notice to this effect is earnestly solicited. Claims 2-12 respectively depend from claim 1 and accordingly are allowable for at least this reason as well as for the separately patentable elements contained in each of the claims. Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In addition, Applicant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicant reserves the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Applicant has made a diligent and sincere effort to place this application in condition for immediate allowance and notice to this effect is earnestly solicited.

Respectfully submitted,

By 

Gregory L. Thorne, Reg. 39,398
Attorney for Applicant(s)
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THORNE & HALAJIAN, LLP
Applied Technology Center
111 West Main Street
Bay Shore, NY 11706
Tel: (631) 665-5139
Fax: (631) 665-5101